IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7653/99, 7654/99 & 7655/99

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M/S RAVJIBHAI DAHYABHAI PATEL & CO.

Versus

STATE OF GUJARAT

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Appearance:

MR BS PATEL for Petitioner

Mr. S.T. mehta, APP for Respondent No. 1

Respondent No. 2 absent.

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/12/2000

ORAL JUDGEMENT

Rule. learned A.P.P. Mr.S.T. Mehta waives service of rule on behalf of the respondent-State in each

of the matter while the respondent no.2-Nadiad Nagarpallika through Octroi Inspector Nadiad though served is absent.

Heard learned Advocate Mr. B.S. Patel for the petitioner in each of the matter.

1. The petitioner has challenged the proceedings of prosecution initiated by Octroi Inspector, Nadiad Nagarpallika against the petitioner in the Court of learned J.M.F.C., Nadiad vide Criminal Case nos.556/95, 557/95 and 558/95 respectively in the above stated petitions.

As common questions of law and fact is involved, all the three petitions are heard together and are being disposed of by this common order.

2. The petitioner has produced on record, true copy of Criminal Case no.556/95, 557/95 and 558/95 respectively in each of the matter. That the said complaints are filed under the provisions of Sec.125 of Gujarat Municipalities Act, 1963 ("Act" for short) read with octroi rules and bye-law 22; for evading due payment of octroi. In criminal case no.556/95, it has been alleged that the petitioner was liable to pay octroi on account of bringing lockers for strong room and furniture to supply the same to the Bank of Baroda, College Road Branch, for which demand notice was issued vide Javak no.4072 dated 2-12-1993 and a reminder was sent on 28-4-1995. In criminal case no.557/95 also it is alleged that the petitioner was liable to pay octroi on account of bringing Godrej lockers for strong room to supply to Peoples Cooperative Bank Limited, Nadiad for which demand notice was issued vide Javak no.5212 dated 18-2-1993 and reminder was sent on 19-4-1994. Similarly in criminal case no.558/99, it is alleged that the petitioner has failed to pay octroi for Godrej locker for strong room and furniture to supply to Bharatiya Jeevan Vima Nigam, DBX Branch, Nadiad for which demand notice was issued vide Javak no.5642 dated 29-3-1994 and reminder was sent on 28-4-1995.

3. It may be noted that initially the present petitioner as accused of the above stated criminal case made application in each case to dismiss the complaint and to discharge on the ground that complaints were filed beyond the period of limitation as prescribed under the Code of Criminal Procedure, 1973 ("Code" for short). That the trial Court after hearing the parties rejected the applications. The petitioner carried the matter to

the District Court by filing separate Revision Applications against each order which were also rejected. Thereafter, the petitioner preferred Criminal Misc. Application in this High Court against the said order of rejection of Revisions, however, withdrew the applications as the said applications amounted to second revision prohibited under Sec.392(2) of the Code. That thereafter, trial in each case proceeded and evidence of the complainant was recorded. After the evidence of complainant, on the basis of date of alleged offence stated by the complainant, again, applications were moved in each case to dismiss the complaint on the ground that the complaints are time barred. The said applications were also rejected, and hence, present petitions are filed.

4. It would be pertinent to note that above criminal case against the petitioners are filed under Sec.125 of the Gujarat Municipalities Act, 1963 read with octroi rules and bye-law no.22. That the provisions of Sec.246 of the said Act read as under:

"246.(1) Subject to the provisions of subsection (3) the chief officer may, and where the executive committee so requires shall, direct any prosecution for any public nuisance whatever and order proceedings to be taken for the recovery of any penalties and for the punishment of any persons offending against the provisions of this Act or of any rule or by-law thereunder and shall order the expenses of such prosecutions or other proceedings to be paid out of the municipal fund:

Provided that no prosecution for an offence under this Act or bye-laws framed thereunder shall be instituted except within six months next after the date of the commission of the offence or, if such date is not known or the offence is a continuing one, within six months next after the commission or discovery of such offence.

(2).....

(3).....

The proviso to the above stated provision of Sec.246 (1) stipulates that no prosecution for an offence under the Act or bye-laws framed thereunder could be instituted except within six months next after the date of commission of the offence or if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence.

5. That, in the instant case, it is undisputed that criminal cases are filed on 4-5-1995 while in each case demand notice for the alleged payment of octroi was served to the petitioner as averred in the complaint were dated prior to six months from the date of filing of the complaint and on the said fact prosecution being beyond the prescribed period of limitation is time barred and could not be sustained.

That the above-stated view is fortified by the observations made by this Court in the matter of PRASANNAKANT NILKANT DAVE V. P.SACHU NARSI & ANR., reported vide 1981 G.L.R. p.381, Head Note (B).

7. On the basis of the foregoing discussion, the trial Court is in clear error of law in rejecting the application of the petitioner as accused of each of the case and the prosecution initiated by the respondent no.2 being time barred cannot be sustained and deserves to be quashed and set aside.

8. In the result, the petitions are allowed. The respective proceedings of criminal case impugned in each of the petition is hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)
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